

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY KENNETH BONDERER,

Plaintiff,

v.

EL DORADO COUNTY JAIL, et al.,

Defendants.

No. 2:21-cv-1335 AC P

ORDER

Plaintiff, a county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against "a
5 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 The complaint alleges that defendants El Dorado County Jail, El Dorado County Sheriff,
13 and Wellpath have violated plaintiff’s constitutional rights by denying him dental care. ECF No.
14 1. Plaintiff alleges that he entered the jail on September 26, 2020, and a week later two
15 temporary fillings came out. Id. at 3-5. Upon requesting dental care, plaintiff was told that only
16 dental emergencies were being handled and even though he has seen the dentist twice, nothing
17 has been done to address the missing fillings. Id. At plaintiff’s last appointment the dentist told
18 him that he was “only putting out fires.” Id. Despite plaintiff’s teeth now rotting and causing
19 him significant pain, he is still being denied treatment. Id.

20 IV. Claims for Which a Response Will Be Required

21 Plaintiff has alleged facts sufficient to demonstrate that the failure to provide dental care
22 violated his rights under the Fourteenth Amendment¹ and was the result of a policy of the El
23 Dorado County Jail to treat only “dental emergencies.” See Gordon v. County of Orange, 888

24
25 ¹ Plaintiff does not specify whether he was a pretrial detainee or a convicted prisoner at the time
26 of the violation. For purposes of screening, the undersigned therefore assumes that he was a
27 pretrial detainee. See Vazquez v. County of Kern, 949 F.3d 1153, 1163-64 (9th Cir. 2020)
28 (“[T]he Fourteenth Amendment is more protective than the Eighth Amendment ‘because the
Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*, while the Eighth
Amendment only prevents the imposition of *cruel and unusual* punishment of *convicted*
prisoners.” (quoting Demery v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004))).

1 F.3d 1118, 1125 (9th Cir. 2018) (defendant violates Fourteenth Amendment where he fails to take
 2 reasonable measures to abate substantial risk of harm to plaintiff of which he was aware).
 3 Accordingly, both the El Dorado County Jail and the El Dorado County Sheriff will be required
 4 to respond to the complaint. See City of Canton v. Harris, 489 U.S. 378, 389 (1989) (“a
 5 municipality can be liable under § 1983 only where its policies are the ‘moving force [behind] the
 6 constitutional violation,’” (alteration in original) (quoting Monell v. Dep’t of Soc. Servs., 436
 7 U.S. 658, 694 and Polk County v. Dodson, 454 U.S. 312, 326 (1981))); Hansen v. Black, 885
 8 F.2d 642, 646 (9th Cir. 1989) (supervisory liability may exist if official implemented “a policy so
 9 deficient that the policy itself is a repudiation of the constitutional rights and is the moving force
 10 of the constitutional violation.” (citation and internal quotations marks omitted)).

11 V. Failure to State a Claim

12 Plaintiff has failed to state a claim against defendant Wellpath because he has not
 13 identified Wellpath’s role in the denial of medical care. See Arnold v. Int’l Bus. Machs. Corp.,
 14 637 F.2d 1350, 1355 (9th Cir. 1981) (no liability under 42 U.S.C. § 1983 unless there is some
 15 affirmative link or connection between a defendant’s actions and the claimed deprivation).

16 VI. Leave to Amend

17 For the reasons set forth above, the court finds that the complaint does not state
 18 cognizable claims against defendant Wellpath. However, it appears that plaintiff may be able to
 19 allege facts to remedy this and he will be given the opportunity to amend the complaint if he
 20 desires.

21 Plaintiff may proceed forthwith to serve defendants El Dorado County Jail and El Dorado
 22 County Sheriff on his claim that he was denied dental care or he may delay serving any defendant
 23 and amend the complaint.

24 Plaintiff will be required to complete and return the attached notice advising the court how
 25 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to
 26 file an amended complaint. If plaintiff elects to proceed on his claims against defendants El
 27 Dorado County Jail and El Dorado County Sheriff without amending the complaint, the court will
 28 proceed to serve the complaint. A decision to go forward without amending the complaint will be

1 considered a voluntarily dismissal without prejudice of his claims against Wellpath.

2 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions
3 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,
4 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named
5 defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).
6 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
7 connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,
8 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official
9 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,
10 268 (9th Cir. 1982) (citations omitted).

11 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
12 his amended complaint complete. Local Rule 220 requires that an amended complaint be
13 complete in itself without reference to any prior pleading. This is because, as a general rule, an
14 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
15 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
16 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
17 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
18 the original complaint no longer serves any function in the case. Therefore, in an amended
19 complaint, as in an original complaint, each claim and the involvement of each defendant must be
20 sufficiently alleged.

21 VII. Plain Language Summary of this Order for a Pro Se Litigant

22 Your request to proceed in forma pauperis is granted. That means you do not have to pay
23 the entire filing fee now. You will pay it over time, out of your trust account.

24 Some of the allegations in the complaint state claims against the defendants and some do
25 not. You have stated claims for relief against defendants El Dorado County Jail and El Dorado
26 County Sheriff. However, you have not alleged sufficient facts to show how Wellpath was
27 involved in the denial of dental care.

28 ///

1 You have a choice to make. You may either (1) proceed immediately on your claims
2 against the El Dorado County Jail and El Dorado County Sheriff and voluntarily dismiss the
3 claims against Wellpath or (2) try to amend the complaint. If you want to go forward without
4 amending the complaint, you will be voluntarily dismissing without prejudice your claims against
5 Wellpath. If you choose to file a first amended complaint, it must include all claims you want to
6 bring. Once an amended complaint is filed, the court will not look at any information in the
7 original complaint. **Any claims and information not in the first amended complaint will not**
8 **be considered.** You must complete the attached notification showing what you want to do and
9 return it to the court. Once the court receives the notice, it will issue an order telling you what
10 you need to do next (i.e. file an amended complaint or complete service paperwork).

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
14 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
15 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
16 Sheriff of El Dorado County filed concurrently herewith.

17 3. Plaintiff's claims against defendant Wellpath do not state claims for which relief can
18 be granted.

19 4. Plaintiff has the option to proceed immediately on his claims against defendants El
20 Dorado County Jail and El Dorado County Sheriff as set forth in Section IV above, or to amend
21 the complaint.

22 5. Within fourteen days of service of this order, plaintiff shall complete and return the
23 attached form notifying the court whether he wants to proceed on the screened complaint or
24 whether he wants to file a first amended complaint. If plaintiff does not return the form, the court

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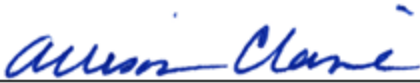
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1 will assume that he is choosing to proceed on the complaint as screened and will recommend
2 dismissal without prejudice of the claims against Wellpath.

3 DATED: April 29, 2022

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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PLAINTIFF'S NOTICE ON HOW TO
PROCEED

Check one:

_____ Plaintiff wants to proceed immediately on his claims against defendants El Dorado County Jail and El Dorado County Sheriff without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice his claims against defendant Wellpath pursuant to Federal Rule of Civil Procedure 41(a).

_____ Plaintiff wants to amend the complaint.

DATED: _____

Jeremy Kenneth Bonderer
Plaintiff pro se